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or property paid out may be recovered, as there is a *locus pœnitentiæ* so long as the contract remains executory. *Eastern, etc., Co. v. Webb, etc., Co.*, 195 Mass. 356, 81 N. E. 251; *Kiewert v. Rindskopf*, 46 Wis. 481, 1 N. W. 163, 32 Am. Rep. 731. See *Monaham v. Monaham*, 77 Vt. 133, 59 Atl. 169, 70 L. R. A. 935. The underlying reason of the rule is to encourage the repudiation and abandonment of illegal agreements. *Falkenberg v. Allen*, *supra*. See, *Ullman v. St. Louis Fair Ass'n*, 167 Mo. 273, 66 S. W. 949, 56 L. R. A. 606. Many other cases may be found showing the application of the rule as it has arisen under various forms of illegal contracts. *Wasserman v. Sloss*, 117 Cal. 425, 49 Pac. 566, 38 L. R. A. 176. See *Hooker v. De Palos*, 28 Ohio St. 251; *Pullman Palace Car Co. v. Central Transportation Co.*, 171 U. S. 138. But this rule has been denied by the New York courts where an action was brought on an illegal contract for money paid out for shares of stock, and it was denied that there was a *locus pœnitentiæ* for the party *in pari delicto*, although the contract had not been fully executed. *Knowlton v. Congress, etc., Spring Co.*, 57 N. Y. 518.

It would seem that the rule in the instant case is sound, both on principle and authority; and that there should be a *locus pœnitentiæ* in such illegal agreements, thus encouraging the abandonment of them.

CRIMINAL CONTEMPT—INFORMATION—VERIFICATION.—The defendant was convicted of criminal contempt upon an affidavit or information specifically charging the alleged offense in positive terms, but verified by the district attorney to the effect that the facts were true and correct upon information and belief. *Held*, the affidavit is sufficient. *Creekmore v. United States* (C. C. A.), 237 Fed. 743. See NOTES, p. 667.

CRIMINAL LAW—FORGERY—TRADING STAMPS.—The defendant was charged with forging certain trading stamps. These stamps did not purport on their face to be the pecuniary obligations of anybody. The information alleged, however, that a certain company was under agreement to redeem such stamps, when properly presented, for a valuable consideration. *Held*, a demurrer to the information will lie, since such stamps are not the subject of forgery. *State v. Sisson, et al.* (Mo.), 192 S. W. 454.

It is well established that any instrument which, if genuine, might be the basis of a legal liability, may be the subject of forgery. CLARK & MARSHALL, CRIMES, § 392. It is sufficient that the instrument appear to possess such legal efficacy, even though it would be void on account of extrinsic circumstances. *United States v. Turner*, 7 Pet. 132; *State v. Wheeler*, 20 Or. 190, 10 L. R. A. 779.

The instrument must, however, possess the legal capacity to defraud. *People v. Tomlinson*, 35 Cal. 503; *Arnold v. Cost*, 3 Gill. & J. (Md.) 219, 22 Am. Dec. 302. See *Terry v. Commonwealth*, 87 Va. 672, 13 S. E. 104. Hence, an instrument which, if genuine, would on its face be void for the purpose intended and upon which, therefore, no one would have a right to rely, cannot be the subject of this crime. *Commonwealth v. Cochran*, 143 Ky. 807, 137 S. W. 521; *Bagley v. State*, 63 Tex. Crim. Rep. 606, 141

S. W. 107. Nor can such an instrument be made good by any averments. *Bagley v. State, supra*.

Where, however, the spurious writing is merely incomplete or obscure, it may, nevertheless, be the subject of forgery, if extrinsic facts exist whereby the holder of the paper might be enabled to defraud another. *Rembert v. State*, 53 Ala. 467, 25 Am. Rep. 639; *Green v. State*, 63 Tex. Crim. Rep. 510, 140 S. W. 444. These facts must be alleged in the indictment and be sufficient to invest the writing with legal force and enable the court to judicially see its tendency to defraud. See *Barnum v. State*, 15 Ohio 717, 45 Am. Dec. 601; *Green v. State, supra*; *State v. Floyd*, 169 Ind. 136, 81 N. E. 1153. In the absence of such averments, a writing of no apparent legal effect will not sustain the indictment. *State v. Thorn*, 66 N. C. 644; *Commonwealth v. Hinds*, 101 Mass. 209; *Goodman v. People*, 228 Ill. 154, 81 N. E. 830. Such averments are not necessary, however, where, in the light of common knowledge, the court can recognize from inspection the capacity of the instrument to prejudice the rights of others. See *Gordon v. Commonwealth*, 100 Va. 825, 41 S. E. 746, 57 L. R. A. 744; *Green v. State, supra*.

A contract is *per se* the subject of forgery. *People v. Munroe*, 100 Cal. 664, 35 Pac. 326, 24 L. R. A. 664. See *People v. Stork*, 133 Cal. 371, 65 Pac. 822. But an instrument to be the subject of forgery need not be one upon which, if genuine, an action could be maintained. *State v. Johnson*, 26 Iowa 407, 96 Am. Dec. 158. A mere *nudum pactum* will support an indictment which sets forth matter *aliunde* showing how it might be used to injure another. See *People v. Tomlinson, supra*; *Barnum v. State, supra*. So, too, will tickets and other instruments evidencing contracts, though they contain no express promise; provided they are accompanied by averments stating the legal contract and showing some valuable interest which would arise from ownership and possession of the instruments if valid. *In re Benson*, 34 Fed. 649; *Commonwealth v. Ray*, 3 Gray (Mass.) 441; *Ex parte Fischl*, 51 Tex. Crim. Rep. 63, 100 S. W. 773. It is with these last named instruments that the trading stamps of the principal case would seem to belong. They were merely incomplete evidence of a contract, and if genuine would have been the basis of a legal liability on the part of the issuing company. The decision can, therefore, hardly be reconciled with the authorities in other jurisdictions.

EVIDENCE—ADMISSIBILITY OF OTHER SIMILAR CRIMES—ABORTION.—The defendant was indicted for murdering a woman while attempting to commit an abortion upon her. The prosecution sought to introduce evidence of a previous abortion committed by the defendant, to show her knowledge and guilty intent. It was not shown that the defendant was guilty of the other abortion which it was claimed she had committed. *Held*, the evidence is inadmissible. *People v. Schultz-Knighten* (Ill.), 115 N. E. 140.

The rule excluding evidence of distinct substantive crimes, so firmly established in all English speaking lands, is rooted in that jealous regard for the liberty of the individual which has distinguished our jurisprudence from all others. *People v. Molineux*, 168 N. Y. 264, 61 N. E. 286,